

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claim 2 is canceled in this amendment. Claims 1, 9, 37, and 38 are amended. New claims 44-52 are herein added. No new matter is added by these amendments or new claims. Claims 1, 3, 4, 6-14, 36-39, 42-52 are now pending in this application.

In the outstanding Office Action, Claims 1, 3, 4, 13, and 37-39 were rejected under 35 U.S.C. § 102(e) as anticipated by Kammerer, 2002/0077526. Claims 1, 3, 4, 7, 8, 36, and 43 were rejected under 35 U.S.C. § 103(a) as obvious over Gellman, 2002/0058959. Claims 6, 12, and 42 were rejected under 35 U.S.C. § 103(a) as obvious over Gellman in view of Landgrebe, 2002/0091298. Claim 14 was rejected under 35 U.S.C. § 103(a) as obvious over Kammerer in view of Allosling Fascia, 1999. Claims 38 and 39 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claim 1 of co-pending U.S. Application No. 10/280,945. Claims 2 and 9-11 were indicated as allowable, but objected to as depending from a rejected base claim. Applicant thanks the Office for its indication of allowable subject matter.

Claims 1, 3, 4, and 13 were rejected under 35 U.S.C. § 102(e) as anticipated by Kammerer. Claims 1, 3, 4, 7, and 8 were rejected under 35 U.S.C. § 103(a) as obvious over Gellman, 2002/0058959. Claims 6 and 12 were rejected under 35 U.S.C. § 103(a) as obvious over Gellman in view of Landgrebe, 2002/0091298. Claim 14 was rejected under 35 U.S.C. § 103(a) as obvious over Kammerer in view of Allosling Fascia, 1999. In response thereto, Applicant amends claim 1 to include the limitations of claim 2, thereby clarifying that the kit of claim 1 includes a first type of needle that comprises a substantially straight needle and a second type of needle that comprises a needle with a curved portion. Applicant submits that neither of Kammerer, Gellman, Landgrebe, or Allosling Fascia teach or suggest this

limitation. Accordingly, Applicant requests the withdrawal of these rejections and the allowance of claim 1 and claims 3, 4, 6-8, and 12-14 depending therefrom.

Claim 36 and 43 were rejected under 35 U.S.C. § 103(a) as obvious over Gellman. Applicant respectfully traverses this rejection, as the Office has failed to state a prima facie case of obviousness. Claim 36 is directed to a surgical sling procedure for treating incontinence. The procedure comprises the steps of providing a surgical kit with an implantable material suitable for a sling procedure, at least one of a first type of needle that is sized and shaped for inserting a sling, at least one of a second type of needle that is sized and shaped for inserting a sling, and a dilator for associating said implantable material suitable for a sling procedure with at least one of said first or second type of needle. The first type of needle is different from the second type of needle. Claim 43 is directed to a surgical kit with an implantable material suitable for a sling procedure, at least one of a first type of needle suitable for a sling procedure, at least one of a second type of needle suitable for a sling procedure, wherein the first type of needle is different than the second type of needle, a dilator for associating said implantable material suitable for a sling procedure with at least one of the first and second type of needle, wherein at least one of said first and second type of needle comprises means for transporting said implantable sling material and dilator in a body of a patient.

In contrast thereto, Gellman discloses a surgical device having a needle, a tether, a dilator, a sling, and a second tether, as well as methods of using this device. Clearly, nothing in Gellman teaches or suggests using more than one needle, or different types of needles. Instead, Gellman consistently teaches the use of a single curved needle. As the Office has failed to state a prima facie case of obviousness, Applicant respectfully requests the allowance of claims 36 and 43.

Claims 37-39 were rejected under 35 U.S.C. § 102(e) as anticipated by Kammerer. In response thereto, Applicant amends claims 37 and 38 to clarify that the adaptor in the present invention is different from the coupler in Kammerer. Support for the present amendment is found in the specification, at least at page 27, lines 4-12. Applicant submits that the adaptor in the present invention is a dilator, and that it is accordingly sized and shaped to provide atraumatic passage through body tissue, with a tapered end. Kammerer, on the other hand, teaches a coupler designed to merely connect the guide needle with the other needle, with no thought to providing a less traumatic passage. Because Kammerer does not disclose an adaptor having a tapered end, Applicant respectfully requests the withdrawal of the rejections of claim 37-39.

Claim 42 was rejected under 35 U.S.C. § 103(a) as obvious over Gellman in view of Landgrebe. Applicant respectfully traverses this rejection. Claim 42 is directed to a kit comprising an implantable material suitable for a sling procedure, a needle that is sized and shaped for inserting a sling, the needle having surfaces for engaging a handle, a dilator for associating said implantable material suitable for a sling procedure with said needle, at least one of a first type of handle having surfaces for attaching the handle to the needle, and at least one of a second type of handle having surfaces for attaching the handle to the needle, wherein the first type of handle is different than the second type of handle.

On the other hand, Gellman discloses a surgical device having a needle, a tether, a dilator, a sling, and a second tether. Nothing in Gellman teaches or suggests more than one needle. Nothing in Gellman teaches or suggests using a handle attached to the needle, or any adaptation of the needle to engage a handle. Instead, the device of Gellman appears to be guided by hand and the tethers of the device. Landgrebe discloses handles and needles adapted to be attached to each other. However, there is no teaching or suggestion to combine the specially adapted handles of Landgrebe with the non-adapted needle and tether system of

Gellman. Because the Office has failed to state a prima facie case of obviousness, Applicant respectfully requests the allowance of claim 42.

Newly added claims 44-46 are directed to surgical kits comprising novel articles adapted to implant sling material and novel mesh slings. New claims 47-52 are directed to novel surgical methods. These new claims are believed to be allowable over the cited references.

Regarding the Office's Requirement for Information, Applicant herein identifies related applications and patents not listed by the Office in the outstanding Office Action:

10/645,588; 10/834,943; 10/840,646; 10/804,718; 10/335,119; 10/106,086; Pat. No. 7,037,255.

Applicant has compared the active claims in the present application to the claims in the other pending applications and issued patents. Applicant notes that certain of the present claims are related to those in abandoned application 10/005,837. However, to the best of Applicant's knowledge, none of the active claims in other applications or patents are directed to the same subject matter, and all of the claims in the present application are patentably distinct from the claims in other applications and patents.

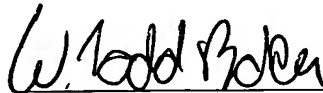
Regarding the Office's provisional double patenting rejection, Applicant will file a terminal disclaimer or, if more appropriate, cancel or amend certain claims, upon the indication of allowability of the claims affected by the double patenting rejection.

Application No. 10/675,816
Reply to Office Action of March 10, 2006

In light of the above discussion and the present amendment, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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